IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.4969 OF 2005

Arvind Amritlal Gupta & Ors. ...Applicants
vs.
State of Maharashtra ...Respondent

Mr.Anil G.V. i/b Mr.H.H.Nagi for the Applicants
Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : AUGUST 10,2005

P.C.:

1. Heard Advocate for the Applicants and the learned A.P.P. for State. An application for anticipatory bail made by the Applicants has been rejected by the Sessions Court. The learned Counsel for the Applicants has placed on record a copy of reasoned order passed by the learned Additional Sessions Judge.

2. The learned Counsel for the Applicants submitted that the F.I.R. alleging commission of offence under Sections 498-A, 406 of the Indian Penal Code has been registered belatedly only after the Applicant No.1 filed a petition for divorce under sections 13(1) (ia) and (ib) of the Hindu Marriage Act, 1955. He submitted that in the F.I.R. it is stated that from March 2003 the complainant i.e. wife of the Applicant No.1 is residing in the house of her father. He, therefore, submitted that the Applicants are entitled to be enlarged on anticipatory bail.

3. The learned A.P.P. pointed out there has been a constant demand of dowry by the Applicants. The learned A.P.P. submitted that considering the seriousness of the allegations against the Applicants, custodial interrogation of the Applicants is required.

4. I have considered the submissions. The F.I.R. has been registered on 21st June 2005 alleging commission of offence under sections 498-A and 406 of I.P.C. The Applicant No.1 is the husband of the complainant. The Applicant No.2 is the father-in-law of the complainant and the Applicant No.3 is the mother-in-law of the complainant. Perusal of the F.I.R. shows that the allegations made therein pertain to the period between the date of marriage i.e. 28th April 1999 to 16th August 2000. A specific allegation of assault is only against the Applicant No.3 and it is alleged that in August 2000 the Applicant No.3 slapped the complaint on her left ear. F.I.R. itself discloses that from March 2003 the complainant is not residing in the matrimonial home. Only one incident of 6th December 2004 mentioned in the F.I.R. has nothing to do with the demand of dowry. All that is stated is that on 6th December 2004 the father of the complainant along with complainant visited the matrimonial home of the complainant and the Applicants did not entertain them and they were driven away from the matrimonial home. Thus, in substance the allegations in the F.I.R. which is registered on 21st June

2005 by the complainant relate to the years 1999 and 2000. Even according to the complainant she is not residing in the matrimonial home from March 2003. A copy of divorce petition filed by the Applicant No.1 annexed to the application shows that the same was filed on 25th April 2005.

5. Reading the allegations made in the F.I.R. as it is, it is obvious that it is filed more than 2 years after the complainant started residing with her parents. F.I.R. is filed after filing of divorce petition by the Applicant No.1 against the complainant on the ground of cruelty. It is obvious that if the Applicants are arrested on the basis of said F.I.R., undue harassment will be caused to the Applicants. Hence the Applicants are entitled to anticipatory bail subject to stringent conditions:

6. Hence I pass the following order :

i) In the event of the arrest of the Applicants in connection with C.R.No.111/2005 registered with D.B.Marg Police Station, Mumbai the Applicants shall be enlarged on bail subject to furnishing P.R.Bond in the sum of Rs.10,000/- (Rupees ten thousand only) each with one or two sureties in the like amount.

ii) Bail is granted subject to the condition that the

Applicants will attend the concerned Police Station on every Thursday and Friday between 4 p.m. to 6 p.m. till the charge sheet is filed and the Applicants will cooperate for the purposes of investigation.

iii) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of accusation against him so as to dissuade him from disclosing such facts to the Court or to the Police Officer/investigating agency. The Applicants shall not tamper with the prosecution evidence.

iv) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

v) This order will enure to the benefit of the Applicants only till charge sheet is filed. Thereafter, he will be free to apply to the appropriate Court for appropriate relief.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

JUDGE